

CHAPTER 5: TAKING ACTION

Once you have adopted a wetland and have become familiar with its unique features, the next step is to help protect it and other wetlands in your community. You can do this through a variety of actions some of which are listed below. As a wetland steward, you have a unique opportunity to get people's attention and to make a difference. Remember, you are not alone in your mission to protect wetlands. There are resource professionals at the local, state, and federal level who can assist you with your efforts.

Educating your Community

The success of any wetland protection effort, whether it is regulatory or voluntary, requires a strong foundation of public awareness of wetland functions and values. People who understand why a wetland should be protected are much more likely to support your efforts. Keep in mind that public education should be an ongoing part of your wetland stewardship project. Here are some suggestions of how to make a difference.

Taking Action

- ✓ Write articles and letters to the editor for your local newspaper.
- ✓ Speak to civic organizations including service clubs (e.g., Rotary) and churches.
- ✓ Speak to local and county planners, regulators, the board of health, conservation commissions, and zoning boards.
- ✓ Get youth involved through outreach to schools, churches, scout troops, and 4-H clubs.
- ✓ Survey community members about their knowledge of, and attitudes towards, wetlands.
- ✓ Create fact sheets or photo displays for local fairs, farm field days, and planning-association meetings.
- ✓ Create interpretive signs at the wetland explaining its unique features and values.
- ✓ Form a wetland stewardship team to help you educate your community and take action.

Enhancing the Wetland

By monitoring your adopted wetland, you may find ways to improve its functioning. You should first consult with wetland professionals (see reference section) on specific practices. You may be able to find groups or agencies to provide funding, materials, and labor to assist you.

Taking Action

- √ Arrange a clean up of trash in the wetland and post signs discouraging future disturbance.
- √ Remove nonnative plants like purple loosestrife that force out the native species that are more appropriate for the site.
- √ Improve the value of the site as wildlife habitat (e.g., build wood-duck boxes, construct safe road crossings for amphibians, or plant wetland species that provide food for wildlife).
- √ Revegetate areas that are degraded from erosion, pollution, or other disturbance.

Improving Protection

Indiana has no state legislation that directly protects wetlands. And only a few communities have local wetland ordinances. As important as public education is, effective wetland conservation in Indiana will require improving regulatory and incentive programs. In some cases, this means making community leaders aware of the planning tools that are being successfully used in other parts of the country. In other cases, it means spreading the word to landowners of the voluntary incentive programs available for private conservation efforts. In yet other cases, it means ensuring that existing regulations are enforced or that new regulations are developed to protect the wetlands that would otherwise fall through the gaps of our existing programs.

Taking Action

- √ Promote appropriate local planning tools including greenways, open-space zoning, and floodway zoning.
- √ Promote a local wetland protection ordinance (for example, requiring developers to maintain 100' buffers around wetlands).
- √ Submit written comments on wetland and flood way permit applications. Public Notices describing proposed projects that may impact wetlands are issued by the Army Corps of Engineers (Section 404 Permit), Indiana Department of Natural Resources (construction in flood way or public lake permits), and Indiana Department of Environmental Management (Section 401 Water Quality Certification)
- √ Help identify and promote wetland restoration and acquisition opportunities in your community. Sometimes the only way to protect a wetland is to buy it. If purchasing the property isn't an option, consider purchasing a conservation easement or the development rights.
- √ Encourage landowners to participate in incentive programs offered by the state or federal government. See the reference section for a listing.
- √ Advocate for improved regulatory protection at the state and federal level.

Wetland Regulations

(Information taken, in part, from Wetlands Watch of Anchorage, National Wildlife Federation, 1996).

Indiana's wetlands are regulated by federal, state and, in some communities, local government. The regulations are often complex and agency staff should be consulted for the most current interpretation.

Clean Water Act Section 404

The goal of the federal Clean Water Act (CWA) is to protect and maintain the physical, chemical, and biological integrity of the nation's waters. Section 404 of the CWA established a program to regulate the discharge of dredged and fill material into wetlands of the United States, including wetlands. Section 404 requires that a federal permit be issued for the discharge of dredged or fill materials into U.S. waters, including wetlands. Activities that are regulated under this program include fill created during development, water resource projects like dams and levees, infrastructure development such as highways, and conversion of wetlands to uplands for farming or forestry.

Requirements of Section 404:

The basic premise of the program is that no discharge or fill material can be permitted if a practical alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. Permitted activities should be water-dependent and the applicant must demonstrate that he/she has complied with the following sequencing in the project planning:

- ▶ Avoid wetland impacts where practicable
- ▶ Minimize potential impacts to wetlands that can not be avoided
- ▶ Compensate for any remaining unavoidable impacts through wetland **creation, enhancement, or restoration**. This is also known as compensatory mitigation. The term **mitigation**, which correctly refers to the entire sequencing process, is often used to refer to the final compensatory step.

Permit Process:

Regulated activities are controlled by a permit review process. An individual permit is usually required for potentially significant impacts. However, for most discharges that will have only minimal adverse effects, the Army Corps or Engineers often grants up-front general permits. These can be issued on a nationwide, regional, or state basis for particular categories of activities, like minor road crossings and utility line backfill, as a means to expedite the permitting process.

Section 404(f) exempts some activities from regulation under Section 404 including ongoing farming, and maintenance of drainage ditches.

Agencies Involved in Section 404 Permit Review:

- ▶ The Army Corps of Engineers (Corps) takes the lead authority for reviewing Section 404 permit applications. It has enforcement authority for violations, which include failure to comply with permit conditions and discharging dredged or fill material into waters of the U.S. without a permit. It also develops program policy and guidance.
- ▶ The U.S. EPA has veto authority in the permit decision process. It has enforcement authority for violations, develops and interprets environmental criteria used in evaluating permit applications, and identifies activities that are exempt.
- ▶ The U.S. Fish and Wildlife Service and the Indiana Department of Natural Resources review and comment on permit applications.

Individual Permit Process:

- ▶ The Corps issues a Public Notice within 15 days of receiving a completed permit application. The Public Notice describes the proposed activity, location, and potential wetland impacts. The public can submit comments within a specified time frame (usually 30 days). The Notice lists the issues that the Corps is seeking public comment on like wildlife, flooding, water quality, and the cumulative impact of the project in combination with past and reasonably-foreseeable impacts. Contact the Corps (Louisville District for most of Indiana; Detroit District for northern 1/3 of IN) to be placed on the mailing list for Public Notices for your geographic area.
- ▶ Citizens may request a public hearing; guidance is provided in the Public Notice.
- ▶ The Corps and other review agencies evaluate the application and comments submitted to the Public Notice and determine if an Environmental Impact Statement is needed.
- ▶ The permit is either issued, issued with conditions, or denied. An appeals process has been recently established that allows the applicant to have a permit denial reviewed. There is currently no administrative appeals process for citizens.

Clean Water Act Section 401

Section 401 of the CWA requires certification from a state that the use of a federal Section 404 permit in that state will not violate state water quality standards. 401 certification can also be a good tool for citizens to use to limit the impact of Nationwide permits (NWP) issued by the Corps. For example, the State of Indiana has denied or conditioned water quality certification for several of these permits (e.g., NWP 13, which allows a certain amount of streambank stabilization to be conducted without an individual review). If a general permit has been denied water quality certification by the State of Indiana, then a project utilizing the activity covered by that NWP must be subjected to an individual review including a Public Notice.

Agency Involved:

- ▶ Indiana Department of Environmental Management (IDEM)

Section 401 Water Quality Certification Requirements:

- ▶ In order to grant water quality certification, IDEM must be assured that the activity will comply with certain provisions of the CWA including the state's water quality standards. These standards direct the state to protect and maintain the beneficial uses of the waters of the state, including wetlands. In 1998, IDEM initiated a process to incorporate wetland features (definition, uses, functions and values) into the existing standards. This is ongoing as of 1999.
- ▶ The applicant has the burden of proving that the activity will comply with these provisions. The applicant can not proceed with the activity until both the state and federal permits are issued.

Certification Process:

- ▶ If the activity is one covered by a NWP approved by IDEM, then certification is automatically granted. If the activity is not a category covered under a NWP or if it is covered by a NWP not granted automatic approval by IDEM, then the project will be submitted to the state for an individual review.
- ▶ A Public Notice is issued by IDEM for a 21 day comment period. The Notice is a stream-lined version of the Corps' Section 404 Public Notice. Contact IDEM's Office of Water Management to receive Notices for the county or counties you are interested in. Some projects that require both a 404 and 401 review may have a joint notice issued by the Corps and IDEM.
- ▶ IDEM will either approve, condition, or deny water quality certification based on a review of the application including comments submitted to the Public Notice. IDEM may require compensatory mitigation to offset proposed impacts. Program guidance on mitigation requirements is being developed as of 1999.

Food Security Act (Farm Bill)

Wetlands occurring on agricultural lands are regulated somewhat differently than other wetlands. For example, the Natural Resource Conservation Service has the authority to conduct wetland determinations (i.e., does it meet jurisdictional criteria) on agricultural lands. The Army Corps has the authority to conduct all other determinations. As mentioned above, certain farming practices are exempt from the CWA (Section 404(F)) and some farming practices are included in Nationwide Permits which are not subject to the individual review that other wetland impacts are.

Swampbuster Provisions:

- ▶ Introduced in the 1985 Food Security Act (Farm Bill)
- ▶ Withhold federal farm program benefits from farmers who convert or modify agricultural wetlands. Any person who plants an agricultural commodity on a wetland that was converted by drainage, dredging, leveling or any other activity in order to make possible crop production, will not receive federal farm program benefits.
- ▶ Changes to the Farm Bill which occurred in 1996 provide more flexibility to landowners, including new exemptions and more opportunities to mitigate wetland losses.

Other State Regulations

In addition to the protection provided by the Clean Water Act, Indiana has enacted other environmental legislation administered by the Department of Natural Resources (DNR) that provides indirect protection for the state's wetlands. Some projects that require a Section 404 permit and Section 401 certification may also require DNR permits. Other projects that do not fall under the jurisdiction of the Section 404 and 401 programs may still require permits from DNR. Potential applicants and interested citizens should contact the DNR's Division of Water for project-specific guidance.

Indiana Flood Control Act

- ▶ Administered by the Indiana Department of Natural Resources (DNR).
- ▶ Requires a Construction in a Floodway permit for projects built within the floodway of a river, stream, or adjacent wetland.
- ▶ Proposed activity can not cause unacceptable adverse impact to fish, wildlife, or botanical resources, or increase the 100-year flood level by more than a specified amount.
- ▶ Descriptions of proposed projects are posted on a weekly basis with a 30-day public comment period. Contact DNR's Division of Water to receive this posting.
- ▶ An administrative appeals process is available to the applicant and interested citizens.

Indiana Lakes Preservation Act

- ▶ Administered by the Indiana Department of Natural Resources (DNR).
- ▶ Requires a permit for alteration of the shoreline along a public freshwater lake.
- ▶ Proposed activity can not significantly degrade aquatic resources or the natural scenic beauty of the lake.
- ▶ Descriptions of proposed projects are posted on a weekly basis with a 30-day public comment period. Contact DNR's Division of Water to receive this posting.
- ▶ An administrative appeals process is available to the applicant and interested citizens.

Mitigation

Compensatory mitigation ("mitigation") is one of the reasons that understanding wetland regulation is so difficult. Understanding mitigation will help citizens advance wetland conservation in their communities. Agencies are increasingly using the mitigation proposed by an applicant to authorize projects that would otherwise be denied for violating federal or state environmental standards. Various mitigation guidance documents have been developed by the DNR, IDEM, and by federal agencies. The general purpose of mitigation is to offset a project's impacts to wetland acreage, function, and/or values. Concerns with mitigation include:

- ▶ It is usually conducted after the impact; this creates a temporal loss of function.
- ▶ It may substitute one type of wetland for another; often the quickest and cheapest wetland is created which creates a net loss of more complex wetland types (e.g., forested).
- ▶ Failure is common. Mitigation often involves wetland creation (using an upland site to build a wetland). This is less likely to succeed than wetland restoration (hydric soils and a seed bank of wetland vegetation are present). In 1998, IDEM initiated a study of past mitigation projects approved under the state's 401 program. Initial results indicate that the majority of projects fail to meet the standards established in the approved permit.
- ▶ A new layer of concern is added by **mitigation banking** which is the restoration, creation, enhancement, or preservation of wetlands conducted for the purpose of generating credits that can be sold to offset future permitted wetland impacts. The profit-driven nature of entrepreneurial banking is potentially at odds with the need to protect and maintain environmental standards. The first mitigation banks in Indiana are currently being developed. Citizens can play an important role in ensuring that banking does not compromise the integrity of Indiana's wetlands. Through the 404 and 401 Public Notice process, citizens can provide input on the planning, development, use, and maintenance of wetland banks in Indiana.